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**REPORT TO THE CONSERVATION AND  
NATURAL RESOURCES SUBCOMMITTEE  
COMMITTEE ON  
GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES**



LM096749

**Followup On Certain Matters  
Concerning The Inspection And  
Regulation Of Outer Continental  
Shelf Oil Operations**

B-146333

Geological Survey  
Department of the Interior

**BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

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FEB. 26, 1974

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-146333

21  
✓ The Honorable Henry S. Reuss  
Chairman, Conservation and Natural  
Resources Subcommittee  
Committee on Government Operations  
House of Representatives

H 01502

Dear Mr. Chairman:

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✓ In response to your letters of July 9, and August 14, 1973, and in accordance with agreements reached with your office, which substantially modified your August 14 request, we are furnishing (1) our comments on the Department of the Interior's reply to you on certain matters discussed in our report entitled "Improved Inspection and Regulation Cou'd Reduce the Possibility of Oil Spills on the Outer Continental Shelf (B-146333, June 29, 1973)," and (2) certain data relating to Geological Survey's administration of the Outer Continental Shelf (OCS) oil and gas program. 23 215

COMMENTS ON THE REPLY OF THE  
DEPARTMENT OF THE INTERIOR

The Department's August 3, 1973, reply to you indicated that it has taken or plans to take actions which should be responsive in implementing our recommendations and suggestions of the Environmental Protection Agency (EPA) discussed in our report dated June 29, 1973.

The Department's reply indicates that two of our recommendations have been implemented as follows:

- Survey Gulf Coast personnel have been reinstructed to apply the prescribed enforcement actions for all violations unless deviations have been authorized.
- Instructions were given to Survey Western region (formerly Pacific) personnel describing the conditions under which they should halt all or part of the operations on a platform (shut-in).

We were advised by a Survey official that our remaining recommendations concerning establishment of a realistic policy on inspection frequency, establishment of a formal inspection training program, issuance of inspection instructions for certain operations not now covered, and regulation of certain operations having pollution potential; and

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one of EPA's suggestions concerning improved preventive maintenance by lessees would be implemented by June 1974.

The Department's positions on the remaining two EPA suggestions, concerning the need for more OCS inspectors and lease provisions on spill prevention and contingency plans, are discussed in the next section of this report.

OTHER MATTERS CONCERNING  
SURVEY'S ADMINISTRATION  
OF OCS PROGRAM

You requested that we furnish data on several matters relating to Survey's administration of the OCS oil and gas program. The following data is furnished in accordance with your request.

Survey's estimate of  
additional inspectors needed

Regarding the adequacy of Survey's inspections discussed in our report to you, EPA suggested that the number of inspectors in the Gulf Coast region may have to be increased. You requested us to obtain from Survey an estimate of the number of inspectors and the funds Survey would need by the end of fiscal year 1976 to provide an adequate Gulf Coast inspection force. You also requested us to determine the basis for Survey's estimate and whether it took into consideration our recommendation that Survey establish a realistic policy on the frequency of inspections for each type of OCS operation.

During fiscal year 1973, Survey's Gulf Coast operations were carried out by staff from three district offices which had a total operating expense of about \$1.9 million and which had 37 inspection and 17 support personnel. Six piloted helicopters were leased to transport the inspectors to the sites where the inspections were to be made.

Survey estimates that by 1976, with interim increases during fiscal years 1974 and 1975 and without any budget limitations, its Gulf Coast operations will have to be carried out from six district offices at a total operating cost of about \$4.6 million. The district offices will require about 78 inspection and 48 support personnel and the leasing of 12 piloted helicopters. Survey's fiscal year 1974 and 1975 budget requests included funding for a total of 40 additional inspection and support personnel. The requests included funds for salaries, contract helicopter services and related overhead costs.

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An analysis of the estimated fiscal year 1976 operating costs as compared with actual fiscal year 1973 operating costs is as follows:

	<u>Actual fiscal year 1973</u>	<u>Estimated fiscal year 1976</u>	<u>Increase over 1973</u>
Personnel and overhead	\$1,080,000	\$2,520,000	\$1,440,000
Contract helicopter service	790,000	1,800,000	1,010,000
Field communications	36,000	150,000	114,000
Office space	<u>48,600</u>	<u>176,700</u>	<u>128,100</u>
Totals	<u>\$1,954,600</u>	<u>\$4,646,700</u>	<u>\$2,692,100</u>

A Survey official stated that the fiscal year 1976 estimate is based on two inspections of each well being drilled by a mobile rig, semiannual inspection of all major producing structures<sup>1</sup>, inspection as needed of other structures which Survey has found to have had the greatest number of problems, and inspection of minor platforms every 15 months. The official also stated that the fiscal year 1976 estimate provides for additional inspectors to keep pace with the Bureau of Land Management's accelerated OCS leasing schedule and with increased operations on existing leases.

A Survey official told us that the estimate of fiscal year 1976 staffing needs was not based on GAO's recommendation of establishing a realistic policy on how frequently each type of OCS operation should be inspected because the inspection frequency by Survey is presently under study along with the feasibility of self inspection by the OCS operators. A Survey official further advised us that once Survey is able to completely determine the desirable inspection frequency, it will be able to determine the Gulf Coast staffing needs in accordance with GAO's recommendation.

<sup>1</sup>A structure which contains producing wells and production equipment and is equipped with a heliport. Survey estimates that about 800 of the total of about 1,970 structures are in this category.

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EPA suggestion for inclusion in OCS  
regulations of specific provisions  
for oil spill prevention

In commenting on the adequacy of Survey's regulation of OCS operations in our report to you, EPA officials said that they were not completely satisfied with the OCS regulations. They suggested that more specific provisions could be written into the lease agreements regarding spill prevention and contingency plans in case of spills.

In his reply to you, the Secretary stated that a special provision on the timely availability of containment and clean-up equipment in the event of an oil spill was included recently in certain Gulf of Mexico OCS leases. You questioned why Survey had not placed this special provision in the OCS regulations, especially, since a lease agreement cannot be revised during the life of the lease except through the revision of the OCS regulations and orders.

Survey is responsible for issuing OCS regulations and orders. The Code of Federal Regulations (30 CFR 250.43) contains a provision requiring the lessees to control and remove all pollutants caused by their drilling or production operations. Survey issued OCS Order No. 7 on August 28, 1969, to implement the regulation provision. OCS Order No. 7 requires the operator to take immediate corrective action when pollution has occurred, to have pollution control equipment available and to have an emergency plan for initiating corrective action to control and remove pollution. OCS Order No. 7 does not define immediate.

The Bureau of Land Management is responsible for the wording and execution of OCS leases. A Bureau official advised us that 18 Gulf Coast leases issued during November 1971 and December 1972 contain a special provision which requires that the lessee maintain or have available under contract, adequate oil containment and clean-up equipment at a readily accessible site. The lessee must generally have such equipment in use at the site of the oil spill within 12 hours after notification of the occurrence of a significant oil spill. The same special lease provision was included in all the leases involved in a December 1973 sale.

A Survey official advised us that prior to the next lease sale, Survey and the Bureau plan to review the difference between OCS Order No. 7 and the Bureau's 12-hour lease stipulation. He stated that based on this review the lease stipulation or the OCS regulations will be revised to eliminate any conflicts found, and will provide for adequate control of the containment and cleanup of oil spills.

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### Availability to the public of notices of noncompliance

Concerning the availability to the public of notices of noncompliance issued to OCS operators for violations of the regulations and OCS orders, Survey officials advised us that the agency has not informed the public of the violations but that such information is available on request. The OCS regulations do not provide that the notices will be available for public inspection at specified locations.

Survey officials believed that it was more important for the public to be aware of how effectively the OCS program was being carried out rather than publicly disclosing the individual notices of noncompliance which contained technical information, and therefore would not be of interest to the public. At the request of the Director of Survey, the National Academy of Engineering established a committee to review OCS operations on a continuing basis to identify weaknesses and recommend corrective actions. The committee will meet at least twice annually to review the work of its own panel studies of OCS operations and to develop findings which we were advised, will be made available to the public. The committee held its first meeting on July 31, 1973.

### Survey procedures for fining violators

Section 5 of the OCS Lands Act makes any person who knowingly and willfully violates any of the Department's rules or regulations on OCS operations subject to a fine of not more than \$2,000 or imprisonment for not more than 6 months, or both. The act provides that each day of a violation shall be deemed to be a separate offense. We noted in our report to you that the authority to fine lessees has been used only once--in 1970 when nine oil companies were fined a total of \$2,358,000 for failing to install required subsurface safety devices.

You requested information on the procedure established by Survey for fining violators of OCS regulations and orders and the extent to which the procedure had been used to recommend fines.

A Survey official advised us that there were no written procedures but that the following procedures, which had been communicated orally to the inspection staff, should be followed by Gulf Coast Survey inspectors in recommending a fine. A Survey official informed us that the procedure will be issued in a written format.

- The inspector should fully document the case by obtaining evidence, photographs, and possible witnesses when he believes a fine is warranted. The inspector should discuss with the District Engineer the reasons why he believes the lessee should be fined.

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- Although the District Engineer may disagree with the inspector's judgment, he is required to forward a memorandum to the Regional Oil and Gas Supervisor with his recommendation as to whether the lessee should be fined.
- The Oil and Gas Supervisor should forward the District Engineer's recommendation along with his own evaluation to the Chief of the Conservation Division at Survey Headquarters.
- The Chief of the Conservation Division should forward the related documents with his recommendation to the Department Solicitor's Office for review. If, after reviewing the case, the Solicitor's Office determines that a knowing and willful violation has occurred, the case is then forwarded to the Department of Justice for final action. If the Solicitor's Office determines that a knowing and willful violation has not occurred, the case is closed or other appropriate action, such as the issuance of a warning letter, is taken.

Survey officials advised us that during fiscal years 1971 and 1972 no recommendations to fine were made by any of the inspectors in the three Gulf Coast district offices. On September 17, 1972, the Director of Survey issued a memorandum which reemphasized the penalty provisions of the OCS Lands Act. Subsequently, four recommendations to fine were made. As of January 1974, two of the recommendations had been closed because the Solicitor's Office determined that fines were not warranted, one recommendation had been returned to Survey for additional information, and one recommendation was being considered by the Solicitor's Office.

A Solicitor's Office official said that the Department does not recommend the amount of fine. The amount of the fine, if any, is determined by the United States District Court.

### Need for lessees to request an inspection

OCS Order No. 8 requires each lessee to request a complete inspection of a structure by Survey when production begins and every 6 months thereafter to insure that the lessees comply with all OCS orders regarding safety systems. You asked us to discuss with Survey officials the need for lessees to request inspections and the reason for wording the OCS order in that manner.

Survey officials could not satisfactorily explain the reason for wording the OCS order in that manner. However, they informed us that they are proposing a revision to OCS Order No. 8 which would eliminate this wording and require the operator to be ready for inspection at any time.

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### Followup on certain matters from the "Outer Continental Shelf Lease Management Study"

You requested that we followup on certain matters in the OCS Lease Management Study report of May 1972 and obtain additional data on (1) Survey's use of punitive shut-ins; (2) the basis for the study's gas flaring revenue loss estimate; (3) Survey estimates of oil and gas revenue lost because of metering at the sales point rather than at the production point, Survey's estimates of the added cost that metering at the production point would impose on Survey and industry, and Survey's views on the effect of a proposed OCS order on gas flaring; (4) a gas line rupture described in the study; (5) availability of the study to the Federal Trade and Power Commissions; and (6) the status of study recommendations.

#### Use of punitive shut-in

You requested information concerning (1) whether Survey was using punitive shut-ins, (2) the opinion of Interior's Office of the Solicitor on the use of punitive shut-ins, and (3) the difference between a punitive shut-in and the type of shut-in now utilized by Survey.

We were advised by Survey officials that they do not use punitive shut-ins as a means of enforcing OCS regulations and orders. In an April 27, 1972, opinion, issued by the Department's Assistant Solicitor-Minerals, Division of Public Lands, it was held that a punitive shut-in was not permissible under the provisions of the OCS Lands Act. (See enclosure I)

Survey presently shuts in all or part of the operations on an OCS structure until a violation noted in an inspection has been corrected. The punitive shut-in would require the OCS operator to halt operations for a fixed time period even though the deficiency may have been corrected prior to the expiration of the stated time period.

#### Lost revenue from gas flaring

The OCS Lease Management Study report stated that during January 1968 and January 1969 nearly 8 billion and 4.5 billion cubic feet of gas, respectively, were flared from Federal OCS leases in the Gulf Coast Region. Projecting this on a 12-month basis, the report estimated a royalty loss of about \$3 million in 1968 and \$1.6 million in 1969.

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A Survey official advised us that the 1968 estimate for the 8 billion cubic feet of flared gas was prepared by an oil company employee acting independently of the oil company by which he was employed from available production data and was supplied to a Survey official. The data supporting the estimate consists of a list of operators by area and the amount of gas flared by each which totals 8 billion cubic feet. We were unable to verify the accuracy or completeness of the data, however, because Survey officials could not recall the name of the individual who had prepared the data.

The study states that the January 1969 estimate was obtained from Survey. Survey officials, however, were unable to locate the supporting documentation.

Metering at the sales point

According to the OCS Lease Management Study losses due to spills, fires, use by lessees and flaring result in a significant amount of royalties on OCS oil and gas production not being collected because royalties are determined at the sales point rather than the production point.

Based on Survey statistics, revenues from these sources during calendar or fiscal year 1972 could have amounted to the following:

<u>Type of loss</u>	<u>Barrels of oil</u>	<u>Cubic feet of gas</u>	<u>Estimate of royalty income</u>
Spills and fires	1,900	29,400,000	\$ 1,900
Used to improve recovery of oil (re injection)		52,200,000,000	1,897,000
Other uses by lessees		35,100,000,000	<u>1,275,600</u>
			<u>\$3,174,500<sup>a</sup></u>
Gas flaring		66,106,000,000	<u>\$2,402,300<sup>b</sup></u>

<sup>a</sup>Calendar year 1972

<sup>b</sup>Fiscal year 1972

Metering of oil for about 200 major platforms is now performed at 60 locations; metering at the production point would require it to be performed at 200 platform locations. Survey estimated that it would cost about an additional \$729,000 annually to determine royalties at the production point for the Gulf of Mexico OCS area. The estimated cost includes the salary of 23 people, transportation and related office

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expense. We were advised by Survey officials that they did not have data for determining the additional costs industry would incur if Survey required metering at the production point.

The standard oil and gas lease used by Interior provides that royalties cannot be collected on oil or gas which was unavoidably lost. Oil and gas lost in spills, blowouts, or fires have in the past generally been determined to be unavoidable losses and not subject to royalty collection.

The standard Interior lease terms exempt from royalty collection gas used for reinjection purposes. Survey officials estimated that between 50 to 60 percent of the gas used to improve recovery of oil by reinjection will eventually be recovered. They also estimated that as a result of reinjection of gas, about an additional 5.2 million barrels of oil were produced on which the Federal Government collected about \$3.2 million in revenue.

Survey's analysis of the gas flared during fiscal year 1972 shows that about 12 percent was flared because it was uneconomical to recover, about 52 percent was flared while awaiting the construction of a pipeline or the installation of other recovery equipment, and about 36 percent was flared during temporary emergency situations such as equipment failures. Such use of gas has in the past been considered an unavoidable loss not subject to royalty collection.

Proposed OCS Order No. 11, as published in the Federal Register on July 5, 1972, would permit flaring of gas that is uneconomical to recover for periods not exceeding 1 year in instances where the operator (1) submits to Survey a geologic, engineering, and economic evaluation supporting the claim of uneconomical recovery, and (2) obtains Survey's approval.

The proposed order would continue to allow gas flaring during temporary emergency situations, such as equipment failure, without Survey's approval. The order would also require Survey's approval for gas to be flared while awaiting the construction of a pipeline or installation of other recovery equipment. The approval could only be for periods not exceeding 1 year and could be given only after the operator has initiated positive actions which will eliminate the gas flaring.

Survey officials told us that they did not have a sound estimate as to what effect the proposed OCS Order No. 11 would have in reducing the amount of gas flared by OCS lessees. A Survey official advised us that it was Survey's intent to eliminate gas flaring where it will ultimately result in a greater loss of equivalent total energy than could be produced if gas flaring was allowed.

Survey officials advised us that the Office of the Solicitor was studying the circumstances under which royalties may be assessed on

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oil and gas lost in spills, blowouts, and fires, including the necessity for determining negligence or avoidable waste. We were also advised by a Survey official that the issue of collecting royalties on flared gas was being studied by the Office of the Solicitor.

Gas line rupture

In discussing the loss of production and royalties from OCS operations, the OCS Lease Management Study cited one example where a gas pipeline ruptured. During the time that the pipeline was being repaired, oil production from the affected leases was allowed to continue and gas was flared. You asked for an explanation of the circumstances surrounding the pipeline rupture and why oil production was not halted.

Survey officials advised us that the gas pipeline which ruptured belonged to the Michigan-Wisconsin Pipeline Co. and was located near the channel entrance to Atchafalaya Bay about 42 miles southwest of Morgan City, Louisiana. The pipeline, which was damaged on July 13, 1971, by a dredge, gathered gas from approximately 16 leases, of which 9 were gas leases and 7 were oil and gas leases.

During the 14 days which the gas line was out of service, about 8.3 billion cubic feet of gas production was lost. Most of this gas would have been produced by the nine gas leases which were shut-in. The remaining seven oil and gas leases, which were allowed to continue operating during the 14 days, produced about 1 million barrels of oil and flared about 650 million cubic feet of gas.

We were advised by Survey officials that Survey decided to allow oil production to continue at the expense of the flared gas because of the large quantity of oil that would be produced compared to the amount of lost Federal revenues from the flared gas. The flared gas represented about a \$30,000 loss of royalty revenue to the Government.

Availability of OCS Lease  
Management Study to Federal Trade  
and Federal Power Commissions

As requested by you, we discussed with Survey officials whether the chapter of the OCS Lease Management Study concerning Survey's effectiveness in managing and controlling revenues accruing to the Government from mineral leasing and production on the OCS had been made available to the Federal Trade and Federal Power Commissions.

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Survey officials advised us that the study had not been requested by or provided to either Commission, nor had Survey taken any action to advise them of the existence of the study. A Survey official advised us that, in his opinion, the study dealt with Survey's own internal operations and therefore would not be of benefit to the Commissions. Survey, however, would be willing to make a copy of the report available to the Commissions upon request.

Status of "OCS Lease Management Study"  
recommendations

In May 1973, a Survey work group issued a report entitled "Report of the Work Group on OCS Safety and Pollution Control," which contained their evaluation of the recommendations of the Outer Continental Shelf Lease Management Study, and two other studies done by the National Aeronautics and Space Administration and the National Academy of Engineering. In accordance with your request, we have summarized the OCS Lease Management Study recommendations and cross-referenced them to the page number of the work group's comments on these recommendations (see enclosure II).

Survey's contract with  
Air Marine, Incorporated

On June 7, 1973, Survey awarded a contract to Air Marine, Incorporated, to provide transportation to OCS structures in the Gulf of Mexico for Survey's Gulf Coast inspectors for a 2-year period at a cost of about \$1.8 million. Subsequent amendments increased the cost to about \$1.9 million.

Survey officials informed us that after the contract award, Air Marine could not make arrangements with the offshore operators for adequate offshore refueling capabilities as required by the contract. Due to the refueling problem you expressed particular concern as to whether (1) consideration was given by Survey to amending OCS regulations to provide the contractor with access to OCS structures for refueling and emergencies, (2) reimbursement was received by offshore operators for the possible additional risk they incur in allowing refueling, and (3) consideration was given by Survey to making other transportation arrangements with the Coast Guard or Navy or establishing its own transportation service.

Survey officials informed us that Air Marine's refueling problems were the result of Survey's failure to award the contract early enough to allow the contractor to make appropriate refueling arrangements and the reluctance of the offshore operators to have the contractor's helicopters use their facilities. They advised us that

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the offshore operators reluctance stems from the fact that they would be subject to more frequent visits by Survey inspectors and the additional hazards from refueling. They also stated that offshore operators receive no payment from Survey or its contractor for the use of their facilities or for the possible additional risk of an accident or pollution occurring because of the refueling operations. OCS regulations do not provide for access to offshore operator's facilities by contract helicopters for refueling or emergencies.

In February 1974, Survey received an opinion from the Solicitor's Office that Survey could require through the issuance of a regulation or inclusion of a provision in new leases that OCS lessees provide refueling points on platforms for the use of helicopters employed by the Department of the Interior in inspection operations on the OCS. Survey plans to issue such a regulation.

Survey officials informed us that they had not contacted the Coast Guard or the Navy to see if they could provide helicopter and/or boat transportation to the OCS facilities for Survey inspectors. They advised us that in a prior contact with the Army, Survey was refused the use of its helicopters because the Army believed that it would be in direct competition with private enterprise.

On February 1, 1974, the Associate Director of Survey ordered that a study be made of the feasibility of Survey establishing its own transportation services to OCS structures.

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Regarding your question concerning the legal authority of Interior, EPA and the Coast Guard to recover from lessees the administrative costs incurred in oil spill cleanup, our Office has obtained the views of the Secretaries of the Interior and Transportation and the Administrator of EPA. We are preparing a separate reply, which will contain our views on this matter.

The portion of your July 9 request dealing with updated information on oil spill cleanup administrative costs incurred by EPA and Coast Guard was furnished in our letter to you dated September 5, 1973.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

*James H. ...*  
Comptroller General  
of the United States

Enclosures - 2

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ENCLOSURE I



United States Department of the Interior

OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

APR 27 1972

Memorandum

To: Director, Geological Survey

From: Assistant Solicitor - Minerals  
Division of Public Lands

Subject: Legal aspects of the IASA report and other  
recommendations relating to OCS oil and  
gas regulatory authority

This is in response to your memorandum of February 4, 1972, requesting our opinion on issues arising from the final report of the IASA group recommending procedures for improvement of the safety and anti-pollution aspects of OCS oil and gas operations. We have reviewed the report, and we also have considered the comments provided by the Offshore Operators Committee.

We agree that the recommendations raise substantial questions relating to the extent of the Department's authority over regulation of the operations of offshore oil and gas leases. We are of the opinion, however, that the broad grant of regulatory authority under the OCS Lands Act is sufficient to enable the Department to implement most of the recommendations of the IASA report. The first two sentences of section 5 of the Act provides the basis for Secretarial regulatory authority.

"The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act."

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This delegation of broad authority is clear on its face; and it is further substantiated by the legislative history of the OCS Lands Act.

The OCS Act must be read in conjunction with the National Environmental Policy Act, 42 U.S.C. §§ 4321-47. Under NEPA, agencies are directed to the fullest extent possible to administer and interpret all public laws in accordance with the policies of the Act. It is clearly a policy of the Act that every federal agency must utilize all possible means to insure full environmental protection in carrying out its regulatory responsibilities. The NEPA proposals would have achieved this result by assigning the scope of Geological Survey's pollution and safety regulatory activities under the OCS Lands Act.

It is necessary to examine briefly the delegation of the Secretary's supervisory functions under Section 5 of the OCS Lands Act. The Act itself contains no specific authority for the Secretary to subdelegate his functions to other officials. As the original delegation of authority to the Secretary is upon such terms as Congress may determine, any subdelegation depends primarily upon the intent of Congress. The basic subdelegation authority of the Secretary of the Interior is found in Reorganization Order No. 3 of 1950 (64 Stat. 1262; 5 U.S.C. § 133c-15, note) which provides that:

the Secretary of the Interior may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary . . .

Under this subdelegation authority, the Secretary has delegated most supervisory functions under the OCS Lands Act to the Director, Geological Survey, and his subordinates. This delegation has been accomplished generally in the regulations governing oil and gas operations in the Outer Continental Shelf, 30 CFR Part 250 and in certain instances by specific delegation in the Departmental Manual. It is important to note that there can be no delegation beyond the Department of the Interior. These regulatory functions must be performed by Geological Survey, and in drafting any orders or regulations there can be no delegation of regulatory functions to private parties.

In exercising his regulatory authority, the Secretary is limited only by the requirement that the regulations be appropriate to effectuate the purpose of the Act, and that the regulations be reasonable in relation to the rights of the parties involved. U.S. v. New York, Stores Co., 154 F. 2d 533 (2d Cir. 1945) cert. denied 325 U.S. 839 (1945)

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Section 5 of the OCS Lands Act provides that the Secretary may issue such regulations as are "necessary and proper". Such a delegation should be given a broad interpretation. When Congress delegates such regulatory authority as is "necessary" to accomplish a purpose, the agency is authorized to use means of regulation which are not spelled out in detail in the statute, provided that the agency's action is in conformance with the purposes and policies of Congress and is not contrary to any terms of the statute. Wigman v. Lower Colo. v. F.R.C., 370 F. 2d 153 (D. C. Cir. 1/67)

It is our conclusion that the Secretary by regulation or OCS order may take all means reasonably necessary to establish standards for safety and pollution to be met by lessees and to insure that lessees comply with these standards. Geological Survey, in its capacity as a regulatory agency, may impose reasonable requirements on OCS lessees in order to aid in establishing, enforcing, and maintaining such standards as long as the proposed action does not constitute a breach of any terms of the lease.

Our response to your specific questions correspond to the numbering in your request.

## A. NAFIS Report

1. (a) We have addressed this question to the Antitrust Division of the Justice Department, and we will advise you of their reply.

(b) As discussed above, the regulatory activities under the OCS Lands Act must be exercised within the Department, and it is our opinion that existing statutory authority would not provide a basis for requiring such an information exchange. In addition, we question whether the Department can force its lessees to form what would amount to an independent organization at some expense to themselves in order to provide for such an exchange.

(c) It is our opinion that there would be no violation of the antitrust laws under such an arrangement if it is confined to dissemination of information directly related to pollution control and safety of operations, and is not used for dissemination of production related information or other data which could be interpreted as decreasing competition in production. We also have requested the opinion of the Antitrust Division on this question, and we reserve a final opinion until we have received their reply.

(1) The existing statutory structure is sufficient to allow Geological Survey to implement such a system. Such a requirement is a logical corollary of any regulatory scheme. However, we feel that the system must be developed with great care to avoid any potential legal objections. We will be pleased to work with you in implementing the system.

2. (a) The Secretary has authority to enter contracts for scientific or technological research into any aspect of problems related to Interior Department programs. 42 U.S.C. § 1922. You will have to work with your contracting officer on Geological Survey's implementation of such a research program.

(b) and (c) A joint R & D program between Geological Survey and industry is a possibility, but it will be much more complex than a program operated by Geological Survey alone. Some legal questions involved are patent rights, joint and contingent liability, and contractual arrangements. If you decide to attempt this approach we will request an opinion from the Division of Procurement and Patents in this office.

(d) There is no such authority. Any joint R & D venture would have to be on a voluntary basis.

3. In order to implement such a program, it is our opinion that Geological Survey must first set standards to be met by the courses for training and certification of personnel in safety and pollution control. Any course of study or training program sufficient to meet these standards should then be approved by Geological Survey. Companies should be free to establish their own training programs or send their personnel to an approved course.

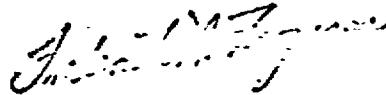
4. The law is well settled that Congress must prescribe the penalties for laws which it writes. Section 5 of the 1933 Davis Act provides for both civil and criminal penalties for violations of regulations. The Supreme Court has stated that "[i]t would transcend both the judicial and administrative function to make additions to those [penalties] which Congress has placed behind a statute." Stewart v. Boles, 322 U. S. 34, 404 (1944)

The question to be asked is whether a particular regulation is designed to punish or whether it is germane to the regulatory function. If the regulation is designed to implement congressional purposes it does

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not because a penalty merely because it has an adverse effect on some parties. Conroy Lumber & Heating Co. v. Carroll, 238 F. 2d 304, 372 (D. C. Cir. 1956), a form of a tax which is necessary to carry out a legitimate regulatory function is permissible; however, if it is designed strictly for punishment it is not permissible, and new legislation would be required.



Frederick H. Ferguson

cc:  
Secretary's Files  
Docket Section  
DPL RF  
~~Mr. Ferguson~~  
Mr. Eddy

CFEddy:bar:4-25-72

CROSS-REFERENCED SUMMARY OF OCS LEASE MANAGEMENT

STUDY RECOMMENDATIONS TO WORK GROUP REPORT

ON OCS SAFETY AND POLLUTION CONTROL

<u>Summary of OCS Lease Management Study recommendations</u>	<u>Page</u>	<u>Location in Work Group Report on OCS Safety and Pollution Control Recommendation number</u>
<u>Production Picceram</u>		
A-1. Procedures should be established to identify potential OCS operating hazards. A hazard review committee should review accident reports, assess OCS orders and recommend needed changes in regulations or procedures.	12-13 32-33	LMS--1 LMS--2
A-2. Design specifications for a safety program to be implemented by industry.	12-13	LMS--2
A-3. Establish an Offshore Operators Subcommittee to work with Survey to review the safety program and exchange information on potential hazards.	32-33	LMS--1
B-1. Adopt the inspection techniques developed in the course of this study.	25-27	LMS--1
B-2. Expand the scope of inspection to include other production operations specified by hazard review activity.	25-27	LMS--2
B-3. Continue the review of inspection results to modify inspection strategies and to advise the Offshore Operators Subcommittee on Safety.	25-27	LMS--3

BEST DOCUMENT AVAILABLE

END

Summary of OCS Lease Management Study recommendations	Location of Work Group on OCS Safety and Health	SURE II
C-1. Augment enforcement authority with required fixed period of shut-in time for noncompliance.	26-27	Port control regulation number
C-2. Inform upper management periodically of actions taken against their company.	26-27	-4
<u>Program Management</u>		-5
1. Designate an OCS Lease Management Program Coordinator.	23-24	
2. The Survey should hold a formal annual review of the program component performance.	23-24	-1
3. Survey management should delineate specific <u>operational policies</u> for both programs.	23-24	-2
4. Survey should encourage personnel, especially field technicians, to participate in industry training programs.	23-24	-2
5. A management study should be conducted to streamline procedures for processing paperwork related to oil and gas operations.	23-24	-4
6. All routine procedures, decision rules, policies and operating criteria pertaining to OCS operations should be documented in a set of Branch of Oil and Gas Operation's manuals.	23-24	-5

Note: Cross-referenced summary does not include the operational recommendations contained in the "OCS Lease Management Study". Revenue program recommendations were not evaluated by working group.